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**TESTIMONY ON HOUSE BILL 1738
RELATING TO CONFINEMENT**

by
Max N. Otani, Director

House Committee on Corrections, Military, and Veterans
Representative Takashi Ohno, Chair
Representative Sonny Ganaden, Vice Chair,

Wednesday, February 2, 2022; 10:00 a.m.
State Capitol, Conference Room 430, and Via Video Conference

Chair Ohno, Vice Chair Ganaden, and Members of the Committee:

The Department of Public Safety (PSD) has reviewed House Bill (HB) 1738, which seeks to establish policies and procedures for long-term confinement, disciplinary confinement, and administrative confinement of inmates in the State's correctional facilities.

The Department offers the following comments regarding this measure. As written, HB 1738 has many similarities with PSD's established policies and procedures, which are periodically reviewed and updated as needed. The Department's policies and procedures align with guidelines of the National Institute of Corrections (NIC) and the American Correctional Association (ACA). PSD's Correctional Policy (COR.11.01) Administrative Segregation and Disciplinary Segregation is posted on PSD's website for anyone to access and review.

Thank you for the opportunity to provide testimony on HB 1738.

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COMMITTEE ON CORRECTIONS, MILITARY, & VETERANS

Representative Takashi Ohno, Chair

Representative Sonny Ganaden, Vice Chair

Wednesday, February 2, 2022

10:00 AM

HB 1738 - COMMENTS & RESEARCH ON CONFINEMENT

Aloha Chair Ohno, Vice Chair Ganaden and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the more than 4,100 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety or the corporate vendor on any given day. We are always mindful that 1,113 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons offers comments on this measure that talks about different reasons for confinement from the general population in the first 18 pages and then on page 19 Section 3 about the development of out-of-state facilities, there is an amendment that out-of-state facilities "be held to the same standards of care and health and safety policies adopted by the department..." This bill does not acknowledge what is widely known, solitary confinement is torture and leads to many problems post-release. There is a huge movement to end solitary confinement.

The pandemic has highlighted the effects of lockdown in the community. Now imagine that you are in a small cell the size of a parking space in an overcrowded facility where the virus is running rampant. No contact with family and friends, overcrowded facilities, and one of Hawai'i's practices - put someone in disciplinary segregation and when 30 days have passed, the person is advised they are now in administrative segregation. CAP knows people who have been stuck in this cycle for years.

In Saguaro, there is a person who has been in solitary for 28 years. He has been isolated for so long, that the other people in solitary call him a 'man/baby' because he has lost the ability to communicate.

Stuart Grassian, a board-certified psychiatrist and a former faculty member at Harvard Medical School, has interviewed hundreds of prisoners in solitary confinement. In one study, he found that roughly a third of solitary inmates were “actively psychotic and/or acutely suicidal.” Grassian has since concluded that solitary can cause a specific psychiatric syndrome, characterized by hallucinations; panic attacks; overt paranoia; diminished impulse control; hypersensitivity to external stimuli; and difficulties with thinking, concentration and memory. Some inmates lose the ability to maintain a state of alertness, while others develop crippling obsessions.¹

In a study of inmates at California’s Pelican Bay State Prison, psychologist Craig Haney found that prisoners “lose the ability to initiate or to control their own behavior, or to organize their own lives. What results is chronic apathy, lethargy, depression and despair. In extreme cases, prisoners may literally stop behaving.” Haney, a professor at the University of California at Santa Cruz, attributed this loss to the near total lack of control that prisoners have over their day-to-day lives in solitary.

“I’ve had prisoners tell me that the first time they’ve been given an opportunity to interact with other people, they can’t do it,” Haney told FRONTLINE. “They don’t come out of their cell ... And obviously this social atrophy, the anxiety which surrounds social interaction can be extremely disabling and problematic for people who are released from solitary confinement, either released back into the larger prison community, or even more poignantly, released from solitary confinement into the larger society.”²

WHAT CORRECTIONS OFFICIALS AND OTHERS HAVE SAID ABOUT ISOLATION

- The Association of State Correctional Administrators issued a report calling prolonged isolation of inmates in jails and prisons "a grave problem in the United States."³
- Inmates sent to solitary should be prisoners "we're afraid of, not mad at," said Gary Mohr, director of the Ohio Department of Rehabilitation and Correction.⁴

Charles Dickens visited the Eastern State Penitentiary in Pennsylvania in 1842, and the editors call him “one of the earliest—and still one of the most eloquent—critics of solitary confinement.” He described the penitents there as men “buried alive.”

There is plenty of research to support ending this harmful practice and we encourage Hawai‘i officials to develop alternatives to this torture.

¹ What Does Solitary Confinement Do To Your Mind? APRIL 22, 2014 / by JASON M. BRESLOW
<https://www.pbs.org/wgbh/frontline/article/what-does-solitary-confinement-do-to-your-mind/>

² Ibid.

³ Rethinking solitary: National prisons group pushes changes, Andrew Welsh-Huggins, AP Legal Affairs Writer, January 16, 2016. <http://www.seattlepi.com/news/us/article/Rethinking-solitary-National-prisons-group-6763615.php>

⁴ Ibid.

RESEARCH

Bureau of Justice Statistics: The Department of Justice⁵ reports that Hawai'i has the 7th highest number of prison suicides in the nation. Isn't this a clarion call for reform? If it isn't, how many people have to die in state correctional facilities before something is done to reform a broken system?

The Eighth Amendment to the United States Constitution requires that prison officials "ensure that inmates receive adequate food, clothing, shelter, and medical care" and "take reasonable measures" to guarantee their safety.

Vera Institute of Justice: Policy changes⁶ that will reduce the use and long-term impact of segregation include the following:

- using alternative sanctions for minor violations
- reducing segregation time for certain categories of violations
- employing standardized incentivized reductions in segregation time for sustained good behavior
- providing opportunities for gradual resocialization to the general prison population

United Nations Special Rapporteur of the Human Rights Council⁷

The Special Rapporteur stresses that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions. He finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society.

The Special Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.

RECOMMENDATIONS

- The Special Rapporteur recommends that States conduct regular reviews of the system of solitary confinement.
- The Special Rapporteur calls upon States to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person as protected by article 10, paragraph 1, of the International Covenant on Civil and Political Rights.

⁵ Bureau of Justice Statistics, Mortality in State Prisons, 2001-2014 Statistical Tables, December 2016, NCJ 250150, Table 13 Number of state and federal prisoner deaths, by cause and jurisdiction, 2001–2014, page 12.

<https://www.bjs.gov/content/pub/pdf/msp0114st.pdf>

⁶ Prisons Within Prisons: The Use of Segregation in the United States, Federal Sentencing Reporter • Vol. 24, No. 1 • October 2011. <http://archive.vera.org/sites/default/files/resources/downloads/prisons-within-prisons-segregation.pdf>

⁷ SEEING INTO SOLITARY REPORT:

http://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf

- The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment — either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement.
- States should take necessary steps to put an end to the practice of solitary confinement in pretrial detention.
- States should abolish the use of solitary confinement for juveniles and persons with mental disabilities.
- Indefinite solitary confinement should be abolished.
- It is clear that short-term solitary confinement can amount to torture or cruel, inhuman or degrading treatment or punishment; it can, however, be a legitimate device in other circumstances, provided that adequate safeguards are in place. In the opinion of the Special Rapporteur, prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.
- The Special Rapporteur reiterates that solitary confinement should be used only in very exceptional circumstances, as a last resort, for as short a time as possible.

GUIDING PRINCIPLES

- Throughout the period of detention, the physical conditions and prison regime of the solitary confinement, and in particular the duration of confinement, must be proportional to the severity of the criminal or disciplinary infraction for which solitary confinement is imposed.
- The physical conditions and prison regime of solitary confinement must be imposed only as a last resort where less restrictive measures could not achieve the intended disciplinary goals.
- Solitary confinement must never be imposed or allowed to continue except where there is an affirmative determination that it will not result in severe pain or suffering, whether physical or mental, giving rise to acts as defined in article 1 or article 16 of the Convention against Torture.
- **All assessments and decisions taken with respect to the imposition of solitary confinement must be clearly documented and readily available to the detained persons and their legal counsel.** This includes the identity and title of the authority imposing solitary confinement, the source of his or her legal attributes to impose it, a statement of underlying justification for its imposition, its duration, the reasons for which solitary confinement is determined to be appropriate in accordance with the detained person's mental and physical health, the reasons for which solitary confinement is determined to be proportional to the infraction, reports from regular review of the justification for solitary confinement, and medical assessments of the detained person's mental and physical health.

Finally, Community Alliance on Prisons would like to STRONGLY RECOMMEND that the department establish a “Buddy System” for those individuals from vulnerable populations (LGBTQ+, pregnant people, and those contending with mental health challenges, etc.). Just as there are individuals who are caregivers for other incarcerated individuals who are ill, establishing a buddy system can do the same. It would be a great training program for people to learn skills the necessary for employment in the health care field while helping out a person who needs assistance. A win-win for both individuals and for the facility.

The community wants a real JUSTICE system, not merely a PROCESSING and TORTURE system that labels and harms people for life. We urge the committee to carefully consider the research, ask who needs to be in our correctional system, and to demand that changes be made NOW before more people die while in the “care and custody” of the state.

Hawai`i must face the fact that most people incarcerated by Hawai`i will return to their communities one day. How they will return and again be part of our communities will reflect how they have been treated by the state while incarcerated.

Please end the torture of solitary that is well-established.

QUALITY CARE, ADEQUATE PROTECTION, & HUMANE MEDICAL CARE ARE FAR BETTER ALTERNATIVES THAN SOLITARY CONFINEMENT

Hawai`i needs to develop better training for staff regarding confinement and to implement alternatives that build communities rather than tear apart the social fabric of Hawai`i. We can and must do better. The research and guidance is readily available – now we need the political will to UNLOCK THE BOX!

Mahalo for this opportunity to testify.